




*Report to the
Auburn City Council*

Action Item

5

Agenda Item No.

City Manager's Approval

To: Mayor and City Council Members
From: Mark D'Ambrogi, Fire Chief 
Date: January 13, 2014
Subject: Authorization for the Fire Chief and City Attorney to sign a
Compromise And Settlement Agreement with Amerigas
Propane, L.P., "AG".

The Issue

Shall the City Council authorize the Fire Chief and City Attorney to sign a Compromise And Settlement Agreement with Amerigas Propane, L.P., "AG", for reimbursement of personnel costs?

Conclusion and Recommendation

Staff recommends that City Council, by Resolution, authorize the Fire Chief and City Attorney to sign a Compromise And Settlement Agreement with Amerigas Propane, L.P., "AG", for reimbursement of personnel costs for the August 2011 Lincoln Tanker Fire.

Background

In August of 2011 the City of Lincoln incurred a significant event; propane rail tanker fire, of which summoned mutual aid public safety resources from surrounding areas including the City of Auburn Fire Department. The fire department committed one (1) personnel to the Incident Management Team for a period of 47 hours. Due to the size and complexity of the incident the State of California Governor's Office of Emergency Services (OES) was requested to assist in processing mutual aid resources including reimbursement for fire resources under the California Fire Assistance Agreement (CFAA). Upon the mitigation of the incident and release of

resources appropriate documentation and processes were completed for cost recovery. Once invoices were completed they were submitted to the responsible "party" for the incident. Due to changes in ownership, corporation re-structuring, and potential litigation, a significant time period has passed and now the responsible "party(s)" have paid submitted invoices. Since the responsible "party" is not a governmental agency that participates under the CFAA, a Compromise And Settlement Agreement is being requested to be executed between "Auburn" and "AG" as settlement to this reimbursement claim. Payment in the form of check has been delivered to the City of Auburn in the invoiced amount. The City Attorney's office has reviewed the agreement and recommends proceeding forward with appropriate action.

Alternatives Available to Council; Implications of Alternatives

1. Authorize, by Resolution, the Fire Chief and City Attorney to sign the Compromise And Settlement Agreement;
2. Take no action; the invoice will remain unpaid and personnel costs will not be recovered.

Fiscal Impact

There is no fiscal impact associated with this process. All costs recovered will be returned to the budget to cover personnel costs associated with the agreement.

Invoice No.: 20110148
Invoice Print Date: 09/02/2011
Incident Order No: CA-XPL-000669
Incident Name: NICOLAUS
MACS Designator: ABR

Local agency, Return invoice to:

Cal EMA Fire and Rescue Div.
Reimbursement Processing
3650 Schriever Avenue
Mather, CA 95655

Chief: Mark D'Ambrogio

Unit	Req. No.	Strike Team	Depart Date/Time	Return Date/Time	Total Hours	Personnel Total	Engine Hours	Engine Reimb.	Support Vehicle	Admin Surchg
THSP	O-21	OVERHEAD	8/23/2011 12:23:00	8/25/2011 11:00:00	47	\$2,162.72			\$288.00	\$398.24
						\$2,162.72		\$0.00	\$288.00	\$398.24

\$2,848.96

Agency Salary Survey Rates on File 2/25/2011

Apparatus GPM rates are

0 to 1000	= \$70.00 per hour
1001 to 1250	= \$80.00 per hour
1251 to 1500	= \$85.00 per hour
1501 to 2000 +	= \$90.00 per hour

Fire Fighter	\$15,740
Apparatus Oper.	\$21,550
Company Officer	\$28,670
Ball. Chief	\$28,670
Asst. Chief	\$19,010
Div. Chief	\$19,010
Dep Chief	\$19,010
Chief	\$60,950

State UI Rate: 0.000000
Local Work Comp: 0.070000

The Invoice amounts are computed on the California Fire Assistance Agreement currently in place between Cal EMA, CAL FIRE, USFS, BLM, NPS, FWS and BIA. Local agencies that have wages that exceed the minimum base rate shall be reimbursed using the Avg. Actual Rate otherwise the established base rate shall be used for reimbursement. **Formula:**
Average Actual Rate: $((A \times H \times 1.5) + (A \times H \times 1.5 \times W) + (A \times H \times 1.5 \times U) + M + E) \times S$ **Established Base Rate:** $((B \times H \times 1.5) + (B \times H \times 1.5 \times W) + (B \times H \times 1.5 \times U) + M + E) \times S$
 where A = Avg. Actual Hourly rate; H = Total hours on Incident, W = local agency's Workers' Compensation Rate (%), U = State Employment Rate (%) S = Surcharge Rate (%) B = Established Hourly Base Rate, E = Engine Reimbursement, where applicable, M = Claimed Miles, where applicable. Chiefs above the Battalion Chief level shall be reimbursed partial to partial unless the employee(s) has a local agreement that they are to be paid above straight time.

Reminder: As per the California Fire Assistance Agreement, invoices not returned to Cal EMA by the local agency within 30 days of receipt by the local agency will be considered null and void.

I certify that to the best of my knowledge and belief that the data above is correct.

7/6/2011
Date

Please sign and return one copy, retain one copy for your records.

Emergency Activity Calculation Record -Fire and Rescue-

MACS Designator: ABR
Strike Team: OVERHEAD
Order Number: CA-XPL-000669
Request No. : O-21

Dispatch Information:

To: INCIDENT	Name: NICOLAUS	Location: LINCOLN, CA	App. Unit No: THSP	OES Vehicle ? N
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Departed: Date: 08/23/2011

Time: 12:23

Returned: Date: 08/25/2011

Time: 11:00

Total Hours: 47.00

Fire Engine or	Apparatus GPM:	License Number:
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Strike Team/Task Force Leader, Assistant Strike Team Leader, or Overhead Personnel:

ICS Title: TECHNICAL SPECIALIST	POV: NO		
Vehicle Make & Model: OTHER	Miles To:	Miles On:	Miles Return:
License No: E-1209084			
Total Miles: 0			

Mutual Aid Responder:

Dept: Auburn VFD

Chief: Mark D'Ambrogio

Phone: (530) 823-4211, EXT: 172 Fax: (530) 823-4512

Mail Box:

Address: 1225 Lincoln Way

Mutual Aid User: Other Explain Other: LNC

CDF Contract:

InterNet Mail:

City: Auburn

State: CA Zip: 95603

Strike Team Expenses

Personnel Type	Hourly Rate	Paid Rate	# on this F-42	Hours on this F42	Total for this F42
Chief	\$60.950	\$60.950	0	0.00	\$0.00
Deputy Chief	\$19.010	\$19.010	0	0.00	\$0.00
Division Chief	\$19.010	\$19.010	0	0.00	\$0.00
Asst. Chief	\$19.010	\$19.010	0	0.00	\$0.00
Battalion Chief	\$28.670	\$43.005	0	0.00	\$0.00
Company Officer	\$28.670	\$43.005	1	47.00	\$2,021.24
Apparatus Oper.	\$21.550	\$32.325	0	0.00	\$0.00
Fire Fighter	\$15.740	\$23.610	0	0.00	\$0.00
Overhead	\$0.000	\$0.000	0	0.00	\$0.00
Travel Expenses	\$0.000				\$0.00
Workers Comp Rate 0.07000					Total Workers Comp \$141.49
UI Rate 0.00000					Total UI \$0.00
					Total Personnel \$2,162.72
					Surcharge-Personnel \$351.44
Engine Hours \$0.00 32					Total Engine Hours \$0.00
					Surcharge-Engine \$0.00
Support/Overhead Vehicle \$96.00 3 (POV Miles or # of Days)					Vehicle Cost \$288.00
					Surcharge-Vehicle \$46.80
					Total for this F42 \$2,848.96

(OES F-42)

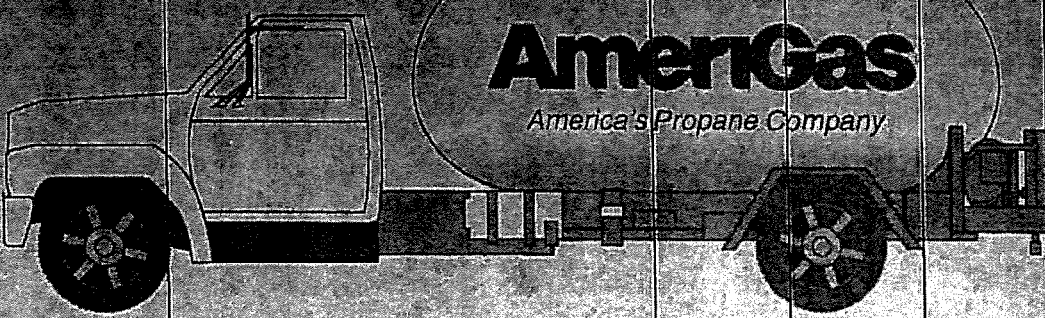
EMERGENCY ACTIVITY RECORD (Revision 4/2005)



1. Agency Designator: State 3 Letter ID CA 444		2. Strike Team/Task Force #: 3 Letter ID CA 444		3. Incident Order Number: State 3 Letter ID CA 444		4. Incident Request Number: 3 Letter ID CA 444													
5. Dispatch Information: Incident Name: ALCOBAS Reporting Location: ICP / BASE 126 JOURNAL PARKWAY To: <input checked="" type="checkbox"/> Incident <input type="checkbox"/> Mobilization Center (Not Staging Area) Committed to Incident: Time (24 hr): 12:23 Date: 8-23-11 Return from Incident: Time (24 hr): 1100 Date: 8-25-11 Redispached: Time (24 hr): _____ Date: _____																			
6. Redispached Information: (Start new F-42 if redispached) <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>State</th> <th>3 Letter ID</th> <th>Number</th> <th>State</th> <th>3 Letter ID</th> <th>Number</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>								State	3 Letter ID	Number	State	3 Letter ID	Number						
State	3 Letter ID	Number	State	3 Letter ID	Number														
7. Overhead Information: ST (TF) Leader / ST (TF) Leader (Trainee) / Overhead <input type="checkbox"/> Strike Team Leader or Task Force Leader <input type="checkbox"/> Strike Team Leader or Task Force Leader (Trainee) <input checked="" type="checkbox"/> Overhead Position (ICS Title): THSP																			
8. Support Vehicle Information: ST (TF) Leader / Overhead / Support Vehicle Vehicle Ownership: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Privately Owned Vehicle <input type="checkbox"/> CDF/OES Vehicle License #: 1209084 (Provide Vin/Serial # only if license is not available) (Check One Only) <input checked="" type="checkbox"/> Sedan <input type="checkbox"/> Van <input type="checkbox"/> S.U.V. <input type="checkbox"/> Pick-up 1/2 Ton Other: 3/4 Ton & Above _____																			
9. Equipment Resource Information: Beginning Odometer: 20903 Ending Odometer: 20903 Total Miles: 0 Apparatus: _____ Type: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 (i.e. Engine, Water Tender, Air Crash Rescue, etc.) <input type="checkbox"/> CDF/OES Vehicle																			
10. Personnel Information: Number of Personnel on Apparatus: 1 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Documentation Only <input type="checkbox"/> (For personnel rotation, document mode of transportation in Block #8) Name (Last Name First): CARLISLE Thomas Classification/Rank: CAPTAIN Last 4 Digits of SSN: 8464 Signature: <i>Thomas Carlisle</i> Date: 8-25-11 Printed Name: THOMAS CARLISLE Date: 8-25-11 OES Representative: <i>John Clay</i> Date: 8-25-11																			

Distribution: WHITE: OES Fire and Rescue, 3650 Schriever Avenue, Mather, CA. 95655 (916) 845-8711
 GOLDENROD: Responding Agency
 PINK: Incident Finance Section
 PLEASE PROVIDE EXPLANATION OF ANY CHANGES OR CORRECTIONS, PRINT NAME, TITLE AND SIGN
 OES F-42 (Rev 4/2005)

Drew & Rogers, Inc. 1-800-610-8210 x 12

Accounts Payable (610)768-7655		Remit Vendor #: 0000138550		Date	11/05/2013	Check Number: 33182069		
INV. Date	INV. Number	Description			Mic#	Gross	Discount	Net
10/31/2013	1031137548	CAZCAZ - JENNIFER ECHIKSON				2,848.96	0.00	2,848.96
								
Fueling comfortable, more productive lives								
						2,848.96		2,848.96

SECURE FEATURES INCLUDE WATERMARK • INVISIBLE FIBERS • MICROPRINTING • VOID FEATURE PANTOGRAPH • ENDORSEMENT BACKER

AmeriGas America's Propane Company
AmeriGas Propane, LP
PO Box 965
Valley Forge PA 19482

The Bank of New York Mellon
Pittsburgh, PA

Check #: 33182069 60-160/433

Date: 11/05/2013

Amount: *\$2,848.96

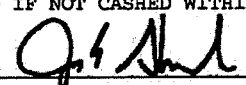
PAY TO THE ORDER OF **2848.96**

Pay: ■ TWO THOUSAND EIGHT HUNDRED FORTY-EIGHT DOLLARS AND NINETY-SIX CENTS *****

To The AUBURN VFD
1225 LINCOLN WAY
AUBURN, CA 95603

Order Of:

VOID IF NOT CASHED WITHIN 120 DAYS


Authorized Signature

VOID OVER \$2,848.96

⑈0033182069⑈ ⑆043301601⑆ 094⑈0772⑈

See Reverse Side For Easy Opening Instructions

AmeriGas P.O. Box 965
Valley Forge, PA 19482

AUBURN VFD
1225 LINCOLN WAY
AUBURN, CA 95603

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RESOLUTION NO. 14-

RESOLUTION AUTHORIZING THE FIRE CHIEF AND CITY ATTORNEY TO SIGN A
COMPROMISE AND SETTLEMENT AGREEMENT WITH AMERICAS PROPANE,
L.P., "AG".

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the Fire
Chief and City Attorney to execute the Compromise And Settlement Agreement
with Amerigas Propane, L.P., "AG" for reimbursement of personnel costs
arising from the 2011 Lincoln Tanker Fire. A true and correct copy of the
Compromise And Settlement Agreement with Amerigas Propane, L.P., "AG" for
reimbursement of personnel costs is attached hereto.

The Fire Chief and City Attorney of the City of Auburn is authorized and
directed to execute the agreement on behalf of the City of Auburn.

DATED: January 13, 2014

Bridget Powers, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the
foregoing resolution was duly passed at a regular meeting of the City Council of the
City of Auburn held on the 13th day of January 2014 by the following vote on roll
call:

Ayes:
Noes:
Absent:

Stephanie L. Snyder, City Clerk

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement ("Agreement") is entered into by and among AmeriGas Propane, L.P., AmeriGas Propane, Inc., Pabco Building Products, LLC, Pacific Coast Building Products, Titan Propane, LLC, dba Northern Energy, Heritage Propane, LP, and Heritage Operating, L.P. (collectively referred to herein as "AG") and Auburn VFD ("Auburn").

RECITALS

A. In August of 2011, a railway tanker caught fire in Lincoln, California which necessitated a response by Auburn.

B. Auburn claimed reimbursement of its response costs from AG.

C. After informal negotiations, the parties have agreed to compromise, finally settle their differences and release each other from all existing and potential claims related to the "Lincoln Tanker Fire" mentioned above.

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS SET FORTH BELOW:

1. **Recitals.** The foregoing recitals are true and incorporated herein, as though set forth in full.

2. **Settlement Amount and Documents To Be Exchanged.**

a. AG has delivered its fully executed counterpart of this Agreement to Auburn and a check in the amount of Two Thousand Eight Hundred and Forty Eight Dollars and Ninety Six cents (\$2,848.96) to Auburn VFD;

b. Once AG's check clears, Auburn will forward its fully executed counterpart of this Agreement to AG's counsel.

3. **Mutual Releases.**

a. **Definitions.** For purpose of this document, the names "AG" and "Auburn" shall mean and include the following persons and/or entities: the named Party or entity individually, jointly, severally and on behalf of their respective affiliated and/or subsidiary companies and partnerships, together with any and all past and present trustees, receivers, board members, employees, officers, directors, shareholders, partners, agents, representatives, subsidiaries, unincorporated divisions, insurance carriers, sureties, consultants, attorneys, successors, assigns, heirs, executors, administrators, tenants, licensees, invitees, joint venturers, members, lower-tiered subcontractors and suppliers, and related persons, predecessors, entities or companies.

b. AG and Auburn hereby fully and irrevocably release, acquit, and discharge each other of and from any and all past, present and future fixed or contingent, matured or unmatured, liquidated or unliquidated, known or unknown, claims, causes of action, counter-claims, crossclaims, liabilities, rights, demands, penalties, assessments, damages, requests, suits, lawsuits, costs (including attorneys' fees, expert fees and expenses), actions, administrative proceedings, arbitration proceedings or orders, losses, and damages, of whatever nature, character, type, or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract or any statutory or common law claim or remedy of any type (collectively, "Claims") related to or arising out of the August, 2011 Lincoln Tanker Fire. This release expressly extends to and includes any claims by Auburn against AG arising from or related to any damages, if any, discovered after the date this Agreement is executed.

c. Notwithstanding Section 1542 of the California Civil Code, which provides that:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor,"

this Agreement shall be a full settlement of said disputes, claims or causes of action. Such compromise settlement shall act as a release of any and all future claims that may arise from the August, 2011 Lincoln Tanker Fire, whether such claims are currently known, unknown, foreseen, or unforeseen. The parties understand and acknowledge the significance and consequence of such specific waiver of Section 1542 and hereby assume full responsibility for any injuries, damages, losses or liabilities that they may hereafter incur from the above-specified August, 2011 Lincoln Tanker Fire.

d. It is understood by AG and Auburn that the facts with respect to which the foregoing releases are given may hereafter turn out to be other than or different from the facts now known or believed to be true by any Party, and each therefore expressly assumes the risk of the facts turning out to be so different and agrees that the foregoing releases shall be in all respects effective and not subject to termination or rescission by any such difference in facts.

e. Notwithstanding anything in this Agreement to the contrary, AG and Auburn shall not be construed to have released and/or waived by this Agreement, and each expressly reserves, any and all rights, claims and defenses arising under or relating to the enforcement of this Agreement.

4. Representations and Warranties.

a. This Agreement is executed by the Parties without reliance upon any statement or representation by the persons or parties herein released, or their attorneys or representatives, other than those set forth in this Agreement.

b. Each of the Parties represents and warrants that the execution and delivery of this Agreement and the consummation of the settlement contemplated hereby has been duly authorized by all necessary and appropriate corporate action.

c. Each of the persons signing this Agreement represents and warrants that he or she has the right and full authority to sign on behalf of the party designated immediately above his or her signed name.

5. General Provisions.

a. No Admission of Liability. Each of the Parties agrees that this Agreement is a compromise relating to the matters released herein, and shall never be treated as an admission of liability of any Party for any purpose, and that liability therefor is expressly denied by each of the Parties.

b. Execution of Additional Documents. Each of the Parties hereby agrees to perform any and all acts and to execute and deliver any and all documents reasonably necessary or convenient to carry out the intent and the provisions of this Agreement.

c. Entire Agreement. This Agreement constitutes the entire agreement among all of the Parties relative to the subject matter hereof. All negotiations, proposals, modifications and agreements prior to the date hereof among the Parties are merged into this Agreement and superseded hereby. There are no other terms, conditions, promises, understandings, statements, or representations, express or implied, among the Parties concerning this Agreement unless set forth in writing and signed by all of the Parties.

d. No Waiver. No action or want of action on the part of any Party at any time to execute any rights or remedies conferred upon it under this Agreement shall be, or shall be asserted to be, a waiver on the part of any party hereto of its rights or remedies hereunder.

e. Amendments. This Agreement may only be modified by an instrument in writing executed by the parties hereto.

f. Law of California. This Agreement shall be construed in accordance with the laws of California.

g. Attorneys' Fees. Should any action (at law or in equity, including but not limited to an action for declaratory relief) or proceeding be brought arising out of, relating to or seeking the interpretation or enforcement of the terms of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with the terms of this Agreement, the prevailing party thereto, as decided by the Court, shall be entitled to reasonable attorneys' fees and costs incurred in addition to any other relief or damages which may be awarded.

h. No Third Party Beneficiary. This Agreement is for the benefit of the Parties and confers no rights, benefits or causes of action in favor of any other third parties or entities.

i. Severance. Should any term, part, portion or provision of this Agreement be decided or declared by the Courts to be, or otherwise found to be, illegal or in conflict with any law of the State of California or the United States, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions and provision shall be deemed severable and shall not be affected thereby, providing such remaining parts, terms, portions or provisions can be construed in substance to constitute the agreement that the Parties intended to enter into in the first instance.

j. Pronouns, Headings. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, or neuter, and to the singular or plural, as the identity of the person may require. Paragraph titles or captions are used in this Agreement for convenience or reference, and in no way define, limit, extend or describe the scope or intent of this Agreement or any of its provisions.

k. Successors and Assigns. This Agreement shall be binding and inure to the benefit of the parties hereto, their predecessors, parents, subsidiaries and affiliated corporations, all officers, directors, shareholders, agents, employees, attorneys, assigns, successors, heirs, executors, administrators, and legal representatives of whatsoever kind or character in privity therewith.

l. Counterparts. This Agreement may be executed in counterparts, one or more of which may be PDFs, but all of which shall constitute one and the same Agreement. PDF'ed signatures of this Agreement shall be accepted by the parties to this Agreement as valid and binding in lieu of original signatures; however, within five (5) business days after the execution of this Agreement, such parties shall also deliver to the other party an original signature page signed by that party.

m. Time for Performance. The Parties understand that time is of the essence with respect to each and every act required by this Agreement. Failure to perform any provision hereof in strict accordance with the Agreement shall be deemed a material breach of the Agreement.

n. Understanding of Agreement. The Parties acknowledge that they have fully read the contents of this Agreement and that they have had the opportunity to obtain the advice of counsel of their choice, and that they have full, complete and total comprehension of the provisions hereof and are in full agreement with each and every one of the terms, conditions and provisions of this Agreement. As such, the Parties agree to waive any and all rights to apply an interpretation of any and all terms, conditions or provisions hereof, including the rule of construction that such ambiguities are to be resolved against the drafter of this Agreement. For the purpose of this instrument, the Parties agree that ambiguities, if any, are to be resolved in the same manner as would have been the case had this instrument been jointly conceived and drafted.

IN WITNESS WHEREOF, each of the parties has executed this Agreement on the date and year written below.

Date: _____

Date: _____

**AMERIGAS PROPANE, L.P., on behalf of
all parties collectively referred to herein as
"AG"**

AUBURN VFD

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Read and Approved this _____ day of _____, 2013.

Jessica Woelfel, Esq.
Attorney for the AG Parties

Read and Approved this _____ day of _____, 2013.

Attorney for Auburn VFD

379251